



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 78 OF 2016

PURITY MUTHONI PLEINPLAINTIFF

VERSUS

NATIONAL OIL CORPORATION LTD.....1ST DEFENDANT

COUNTY GOVERNMENT OF LAIKIPIA2ND DEFENDANT

RULING

(Suit seeking to stop construction of a petrol station; contention of applicant that the intended project is in a residential area; intended project not confirmed but is still under consideration for approval and no licence issued; authorities directed to hear the objections of the applicant and communicate any decision to her; suit however premature as no decision on the project has been made)

1. This suit was commenced by way of plaint filed on 10 March 2016. The plaintiff has pleaded that she is the registered proprietor of the land parcel Nyahururu Municipality Block 8/1036 which she claims is situated in a residential zone. She has now learnt that the 1st defendant, an oil company, has acquired the land parcel Nyahururu Municipality Block 8/375, which is adjacent to her land, and that the 1st defendant intends to construct a petrol station. She has contended that the special conditions in the lease of the 1st defendant's title, prohibits the sale of petrol and motor oils. She has pleaded that she has raised several objections against the intended project to the County Government of Laikipia, the 2nd defendant, but the 2nd defendant has gone ahead and approved the construction of the petrol station. It is further contended that the approvals were granted without there being an Environmental Impact Assessment (EIA). In this suit, the plaintiff wants an order of permanent injunction restraining the defendants from constructing the intended petrol station and an order compelling the 2nd defendant to cancel the building plans for the intended petrol station.

2. Together with the plaint, the plaintiff filed an application under Order 40 Rule 1 and 2 of the Civil Procedure Rules, for injunction, to restrain the construction of the petrol station pending hearing and determination of this suit. It is that application which is the subject of this ruling.

3. The 2nd respondent, has only entered appearance to the suit and did not file anything in response to the application. The 1st respondent has however filed a replying affidavit to oppose the motion. The replying affidavit is sworn by Gladys Koletit, its legal affairs manager. She has deposed inter alia that on 2 April 2015, the 1st defendant purchased the land parcel No. 375 and it intends to construct a service station. She has deposed that the 1st defendant is in the process of getting the necessary approvals to construct the service station and that the plaintiff has made her presentations. She has averred that this suit is therefore

premature and speculative. She has stated that approval has yet to be given pending completion of an EIA report. She has refuted that the property is situated in a residential area and has pointed out that the plaintiff's own lease indicates that the area is zoned for light industrial use. She has stated that developments on the same row include or have included Gulf Oil Petrol Station, the Rural Access Road offices and a milk processing plant and collection centre.

4. In his submissions, counsel for the applicant submitted inter alia that there has been violation of the provisions of Section 41 (3) of the Physical Planning Act, Cap 286, Laws of Kenya which requires involvement of immediate and adjacent neighbours. He also submitted that there has been violation of Section 59 (1) of the Environmental Management and Coordination Act (EMCA), which requires that there be an EIA project report before any project can commence.

5. On his part, counsel for the 1st respondent submitted inter alia that the current suit seeks to contest the outcome of reports that are still pending. She reiterated the issues raised in the replying affidavit that the land is in a light industrial zone, and that the 1st respondent is awaiting approvals for the intended construction.

6. I have considered the matter. It is not denied that the 1st respondent intends to construct a petrol station in land which is adjacent to or in the vicinity of land owned by the plaintiff. It does appear, that so far, there has been no approval granted to the 1st respondent to commence the project. What the 1st respondent has done is to submit its plans for approval but the application is pending consideration. The 1st respondent has stated that it is in the process of conducting an EIA meaning that no EIA licence has so far been issued for the project.

7. In my view, the suit by the applicant is premature. The applicant should make representations before the County Government of Laikipia and before the National Environmental Management Authority (NEMA), vide which she should table her reasons for objecting to the intended project. But that said, it is important that the provisions of the law as set out in the Physical Planning Act, and EMCA, be fully complied with. There ought to be full public participation as outlined in the two statutes including full consultation with the applicant and other owners of contiguous land. The applicant deserves to be heard on her objections and a judicious decision reached. Such decision ought to be communicated in writing to the applicant, and the applicant will then be at liberty seek legal redress if she so wishes, depending on the outcome of the decision.

8. For the reason that this suit is premature, I will not issue the order of injunction sought. I will instead direct the 2nd respondent and NEMA to listen keenly to the objections of the applicant, and as I have stated above, communicate any decision to her so that she can consider her options.

9. That said, I do applaud the applicant for being vigilant. It is a culture that Kenyans need to develop. It is only if we are keen on the nature of developments around us that we can ensure that authorities comply with their mandate. We should never sleep on our rights or feel that we are hamstrung. I therefore direct that this ruling be served upon the 2nd respondent and upon NEMA for them to act as directed.

10. The applicant may not have obtained the orders she sought but I think she had good intentions. For that reason, I make no orders as to costs.

11. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 10th day of November 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Ms. Gachanja holding brief for Mr. Ikua for the plaintiff/applicant

Mr Ndubi holding brief for Ms. Omar for the 1st defendant/respondent

No appearance on the part of M/s Gichuhi Mwangi & Co Advocates for the 2nd defendant/respondent.

Court Assistant: Wanjohi

MUNYAO SILA

JUDGE

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